



U.S. Department of Justice

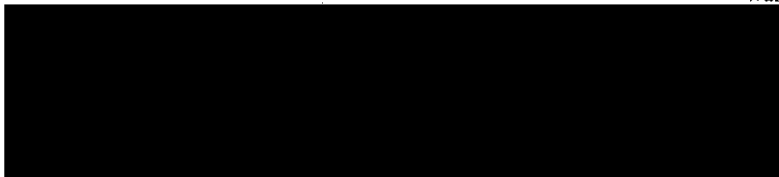
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS

425 Eye Street N.W.

ULLB, 3rd Floor

Washington, D.C. 20536



C1

File: EAC-99-197-53991

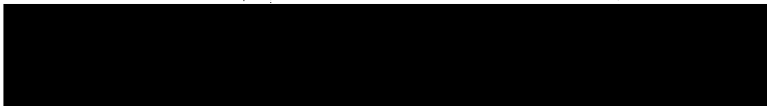
Office: Vermont Service Center

Date:

NOV 27 2000

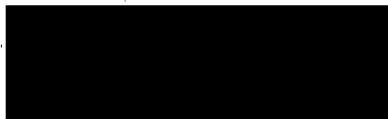
IN RE: Petitioner:

Beneficiary:



Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

IN BEHALF OF PETITIONER:



Public Copy

Identifying data removed to
prevent clearly unwarranted
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mark C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as an evangelist. The director denied the petition determining that the petitioner had failed to establish that it is a qualifying, non-profit religious organization. The director also found that the petitioner had failed to establish that the prospective occupation is a religious occupation.

On appeal, the petitioner argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

- (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

- (ii) seeks to enter the United States--

- (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

- (II) before October 1, 2003, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

- (III) before October 1, 2003, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

- (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue to be examined is whether the petitioning organization meets the requirements of 8 C.F.R. 204.5(m)(3), which in pertinent part, states that each petition for a religious worker must be accompanied by:

(i) Evidence that the organization qualifies as a nonprofit organization in the form of either:

(A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organizations's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or

(B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations...

The petitioner submitted the final three pages of a four-page letter which discussed the possible tax-exempt status of "The Korean Presbyterian Church of." On February 17, 2000, the director requested that the petitioner submit evidence of its tax-exempt status. In response, the petitioner submitted a letter dated June 29, 1994 from the Internal Revenue Service ("IRS"), addressed to a certified public accountant, which indicated that The Korean Presbyterian Church of [REDACTED] was a religious organization. The petitioner also submitted photocopies of 1999 Forms W-2 issued by it to the beneficiary. The employer identification number on these Forms W-2 is the same as the one on the June 29, 1994 letter from the IRS. On appeal, counsel states that the petitioner is a non-profit religious organization. The evidence submitted in support of this petition does establish that the petitioner has been granted an exemption by the IRS. Accordingly, the petitioner has met the requirements at 8 C.F.R. 204.5(m)(3).

The next issue to be examined is whether the prospective occupation is a religious occupation.

8 C.F.R. 204.5(m)(2) states, in pertinent part, that:

Religious occupation means an activity which relates to a traditional religious function. Examples of individuals in religious occupations include, but are not limited to, liturgical workers, religious instructors, religious counselors, cantors, catechists, workers in religious hospitals or religious health care facilities, missionaries, religious translators, or religious

broadcasters. This group does not include janitors, maintenance workers, clerks, fund raisers, or persons solely involved in the solicitation of donations.

The regulation does not define the term "traditional religious function" and instead provides only a brief list of examples. The examples listed reflect that not all employees of a religious organization are considered to be engaged in a religious occupation. The regulation states that positions such as cantor, missionary, or religious instructor are examples of qualifying religious occupations. Persons in such positions must complete prescribed courses of training established by the governing body of the denomination and their services are directly related to the creed of the denomination. The regulation reflects that nonqualifying positions are those whose duties are primarily administrative, humanitarian, or secular. Persons in such positions must be qualified in their occupation, but they require no specific religious training or theological education.

The Service therefore interprets the term "traditional religious function" to require a demonstration that the duties of the position are directly related to the religious creed of the denomination, that specific prescribed religious training or theological education is required, that the position is defined and recognized by the governing body of the denomination, and that the position is traditionally a permanent, full-time, salaried occupation within the denomination.

In a letter dated June 2, 1999, the petitioner listed the beneficiary's job duties as follows:

- (1) assisting the pastor in conducting worship services;
- (2) providing spiritual guidance to church members;
- (3) administering Sunday church services for children and youth members;
- (4) organizing and running bible studies for church members;
- (5) visiting new and existing church members at home or hospitals.

The petitioner further stated that:

the duties of an Assistant Pastor involve with specific training, knowledge, and experience with Christian religions and Presbyterian's Church's tradition, we require a minimum two years of full-time education in Theology and two years of full-time experience as an Assistant Pastor.

The petitioner also submitted photocopies of the beneficiary's transcript and degree from the Presbyterian General Assembly Theological Seminary. These documents indicate that the beneficiary attended the Seminary from March 4, 1977 to February 16, 1979 and studied in the Women's Pastoral Ministry Program. The petitioner also submitted a self-prepared financial statement for the year ended December 31, 1998. According to this document, the minister was the only individual who received a salary that year.

On February 17, 2000, the director requested that the petitioner submit additional information. In response, the petitioner provided an hourly breakdown of the beneficiary's duties. The petitioner also submitted the beneficiary's Form W-2 and tax return for 1999. These documents indicate that the beneficiary received \$12,000.00 from the petitioner that year.

On appeal, the petitioner submits a letter from [REDACTED] the Secretary of the America Presbytery in U.S.A. of the Korean Presbyterian Church. [REDACTED] states that an evangelist "is considered to be traditional religious occupation in our denomination." [REDACTED] further lists the job duties and qualifications for evangelists. These descriptions are identical to those provided by the petitioner.

The evidence submitted in support of this petition does not establish that the prospective occupation is a religious occupation. The petitioner indicated that an evangelist must complete two years of theological study; however, based on the description of the job duties that was provided by the petitioner it is not clear that any theological education would be required to perform the duties of an evangelist. Many of the duties performed by an evangelist (providing spiritual guidance, running Bible study, visiting church members) could be performed by any devout member of the congregation. Further, it is clear that the position of evangelist is not traditionally a full-time, salaried occupation within the denomination. The 1998 self-prepared financial statement did not provide for a salary for an evangelist. It seems that the position of "evangelist" was created when the beneficiary began receiving a salary from the petitioner in 1999. As such, the petitioner has failed to establish that the occupation of "evangelist" is a religious occupation.

Beyond the decision of the director, the petitioner has failed to establish that the beneficiary will not be solely dependent on supplemental employment or solicitation of funds for support as required at 8 C.F.R. 204.5(m)(4). As the appeal will be dismissed on the ground discussed, this issue need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.